"bottom-up" approach. The latter, of course, is more conducive to establishing a competitive market place.

The issue of whether an imputation rule (informal, such as employed by the Illinois Commerce Commission, referenced by the Commission in paragraph 184, or formal, as extensive imputation rules) should be applied is resolved by the recognition that only by means of imputation can it be established whether or not the incumbent LEC price-discriminates against dependent competitors. That is, to determine whether the incumbent LEC charges itself -- implicitly -- lower rates for certain network functionalities or services one simply is required to perform an imputation test, informally or otherwise. Given the strong language in the Act against discrimination (see discussion on pertinent paragraphs), the answer to the question of whether imputation is relevant and whether an imputation rule (requirement) should be mandated is a resounding: *Yes*.

[187, 188] *Concerns about certain services that are being sold, allegedly, below cost should be resolved in the Commission's Universal Service proceeding, CC Docket No. 96-45.*

To the extent the expressed concerns involve the pricing of non-core, intrastate retail services, state commissions, rather than the FCC, are the more appropriate *fora* for resolutions of these issues.

## C. Obligations Imposed on "Local Exchange Carriers" by Section 251(b)

### 5. Reciprocal Compensation for Transport and Termination of Traffic

#### c. Definitions of Transport and Termination of Telecommunications

[230] *The Commission should interpret the provisions of Act so as to limit discrimination between classes of carriers. Specifically, adjacent non-competing LECs should not be allowed to receive interconnection based on preferential rates and conditions. Preferential rates and conditions are inconsistent with the long run development of competitive markets.*

Clearly, the distinction between non-competing neighboring LECs and competing LECs will be short-lived as incumbent LECs begin to "invade" one another's territories.[31] It is important, therefore, that *all* LECs face the same terms and conditions for interconnection services.

[231] *The language (transport and termination) permits a two-part tariff structure. In general, rates structures should reflect cost causation. Indeed, rate structures that do not reflect cost-causation may violate the provision of the Act on cost-based pricing.*

Generally speaking, the exchange of local traffic between competing LECs (for which interconnection arrangements are needed) involves transport functions and the subsequent call termination functions of a network. To the extent that transport functions and call termination functions have a different cost structure, the language of the Act permits a two-part tariff structure that reflects these difference in cost causation. Indeed, one might argue, in such a

[31]In Texas, for example, GTE is currently applying for a certificate to offer service in Southwestern Bell's territory in competition with Southwestern Bell. TPUC Docket No. 15760, *Application of GTE Southwest, Inc., for a Service Provider Certificate of Operating Authority*.

situation, the Act mandates a two part tariff structure to ensure that rates are sufficiently cost based.

### d. Rate Levels

[232, 233] *The pricing standards for interconnection and network elements and transport and termination of traffic are, in essence, the same. Both standards mandate that charges are to be based on (incremental) cost. (Further, the perceived problem contemplated in this paragraph is not relevant, because no call termination or transport charges apply in the contemplated situation.)*

While the Act provides different language for determining the charges for interconnection and network elements and for transport and termination of traffic, in essence, the cost standards in the Act are the same. The cost standard for interconnection and network elements explicitly rejects rate-based methods, which almost naturally implies, therefore, that prices should be based on a forward-looking costing methodology, such as TSLRIC. (See pertinent discussion of costing methodologies above.)

The cost standard for transport and termination of traffic provides that charges must be based on a "reasonable approximation of the *additional costs* of terminating such calls." (Section 252(d)(2)(A)(ii)) (Emphasis added.) Clearly, TSLRIC is a reasonable approximation of the additional costs. Indeed, one might argue that another costs standard, such as the explicitly rejected rate-based cost standard, is *not* a reasonable approximation of the additional cost. It appears, therefore, that the Commission can comfortably use the same cost standard for determining the charges for interconnection, network elements, call transport functions and call termination functions.

With respect to the perceived problem contemplated by the Commission in this paragraph, the problem simply never comes about as the unbundled loop is connected to the new entrant's own switching facilities. That is, no local call termination charges would ever apply to a call originating on the new entrant's own network and terminating on its own network to a customer that uses unbundled loop facilities of the incumbent LEC.

[234] *Upper-limits for transport and termination charges may be set at the incremental costs for dedicated interstate transport and interstate local switching (switched access element). The switched access rate structure, however, is based on the network architecture of the incumbent LECs and may not fit the "Network of the Future," deployed by new entrants In any event, the Commission should prevent that new entrant are forced into collocation arrangements, which only serve to increase the cost to new entrants.*

The Commission should issue clear, precise and sound principles for establishing charges and physical arrangements for the exchange of local traffic. A uniform nationwide approach to this issue is of paramount importance for all carriers that seek to operate nationwide. In general, the more certainty new entrants encounter (in terms of regulatory requirements and interconnection arrangements with incumbent LECs), the easier it will be for such carriers to make sound business decisions on whether or not to enter local exchange markets. After all, uncertainty is the enemy of any business venture, but particularly of those companies that do not yet have customers, such as the new entrants. Because financial markets require higher returns for riskier activities, increased uncertainty stemming from a hodge-potch of state regulations, some good and some bad, will invariably increase the cost to new entrants, thus erecting yet another barrier-to-entry.

To protect new entrants, the Commission might consider determining price ceilings for transport and call termination charges. The incremental cost of dedicated interstate transport could serve as a price ceiling for transport charges. The incremental cost of local switching could be used to set an upper limit for call termination charges. While this approach has some obvious merits, it also suffers from some problems. First, as noted in regard to other sections, the current access charge regime may not be appropriately reflective of cost-causation. For example, local switching cost are typically reported in terms of minutes of use costs. Increasingly, however, one could argue that the cost of running a switch is more like the cost of running any computer: costs are based on capacity and usage related costs are virtually *nil*. Adopting the current access regime for determining the upper limits on transport and termination charges, therefore, runs the risk of contaminating a determination of a more appropriate rate structure (i.e., one more reflective of cost causation.)

### e. Symmetry

[235] *Rate symmetry requirements are consistent with the Act as long as rates are based on TSLRIC. TSLRIC is based on least cost, forward-looking, technologies. Therefore, TSLRIC based rates should not vary much across companies.*

[236] *Symmetric rates based on the incumbent LEC's TSLRIC is administratively efficient. It also promotes economic efficiency by inducing carriers to reduce their costs. The Commission's assertion that "a competitor may posses a degree of market power over the incumbent LEC" is mistaken.*

Setting transport and termination charges based on the incumbent LEC's TSLRIC has a number of advantages. First, as the Commission noted, it is administratively simpler than examining the costs of each and every new entrant that seeks interconnection with the incumbent LEC. In effect, the incumbent LEC's transport and termination charges would be established as the prevailing charges in the market.

Second, symmetrical charges would induce carriers to become more efficient. By contrast, if charges are asymmetrical, then (a) the cost cutting efforts of a carrier will mostly benefit its competitors which would face lower charges for terminating calls, and (b) a carrier's inefficiencies will handicap competitors which would face higher charges for terminating calls. In short, *asymmetrical* rates create a perverse incentive structure.

The Commission is mistaken in its assertion that "a competitor may posses a degree of market power over the incumbent LEC that needs to terminate a call on the competitor's network." As is clear from the interim number portability arrangements that some LECs have proposed, they have no qualms about blocking calls from their own customers as long as these calls are placed to customers of the new entrant. For example, the remote call forwarding (RCF) arrangements proposed by most of the incumbent LECs involve "additional call paths[32]" for simultaneous calls placed to a ported number.[33] In proposing to charge for additional call

[32]The "additional call paths" allows additional calls to be placed against a ported number when another call is already in process. In the absence of an additional call path, the second call to a ported number would receive a busy signal. Blockage of simultaneous calls to ported numbers would frustrate efforts of new entrants to offer such features as call-waiting, which are useful only with simultaneously incoming calls.

[33]For example, additional call paths are included in the interim number portability tariffs filed by Ameritech in Illinois and Michigan. They are also part of the tariffs proposed by Southwestern Bell, GTE, and Contel in Texas. See, e.g., TPUC Docket No. 14943, *Applications of GTE Southwest, Inc. and Contel of Texas, Inc. for Interim Number Portability*

paths, the incumbent LEC ignores its own responsibility to complete calls for its own customers. Most importantly, these incumbent LECs seem totally unfazed by the prospect of blocking calls from their own customers if the new entrant does not order the additional call paths. This behavior clearly indicates that the incumbent LECs are comfortable blaming the new entrant for any blockages. OPC fears that the incumbent LECs have assessed their market power correctly. If blockages occur, the new entrants will be blamed, and not the incumbent LECs. The Commission should reconsider its assertion that new entrants may sometimes have market power over incumbent LECs. They do not.

[237, 238] *Symmetrical rates are critical in protecting new entrants from the incumbent LEC and from misdirected state commission policies, such as "play or pay."*

The Commission should recognize that little could be worse for a new entrant than to get saddled with asymmetrical rates. To be forced to pay rates to the incumbent LEC that are higher than the rates it can charge to the incumbent LEC, would be an almost crippling disadvantage to new entrants. This is particularly true for new entrants that would serve customers with large traffic volumes in flat-rated areas. Another example of asymmetric rates is New York's "play-or-pay" arrangement (a more detailed discussion of why "play or pay" is inappropriate, has been provided previously). To protect new entrants against such "worst of all possible worlds" scenarios, the Commission should mandate symmetrical rates.

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*Pursuant to PURA 1995 §3.455.*

### f. Bill and Keep Arrangements

[239 through 242] *The Commission is authorized to impose "bill and keep" arrangements. "Bill and keep" is an efficient compensation arrangements. "Bill and keep" would not favor customers with mostly outgoing traffic, because local calling is but one of the revenue sources. Lucrative features, such as call waiting and caller-ID, are often for incoming calls.*

Bill and keep is an efficient and appropriate method for interconnecting networks. Indeed, in certain states, it has been the preferred method of incumbent LECs for interconnecting for EAS type traffic. Previously, OPC discussed an EAS arrangement utilized by Ameritech Michigan and the independent LECs in Michigan in its comments to paragraphs 57 through 59, on interconnection. The Commission should note the last provision of the arrangement which states the following:

> Ameritech and the independent LEC each *retain the charges* to its end users for the extended area service traffic. The only settlements between Ameritech and the independent LEC is for trunking facilities in the event that either company falls short of furnishing 50% of those facilities.[34]

With respect to the Commission's observation that 'bill and keep' may lead to outbound calling patterns, the Commission should consider the following.

First, it is easily demonstrated that, under "bill and keep," a customer that is a *net-importer* of calls may very well be more profitable to a carrier than a customers that is a *net-exporter* of calls (even if this customer uses no vertical features or long distance services, which

[34]A more detailed description of the EAS arrangement between Ameritech Michigan and the independent LECs in Michigan is found in Ameritech's response to the Michigan Staff's First Discovery Request in Case No. U-10647, STMB0003.

by itself could have made this assertion true). As long as the net-importer makes *more* outbound calls than the net-exporter of calls, then the net-importer under "bill and keep" would be more profitable to a carrier. For example, a customer that makes 100 calls a month and receives 120 (a net-importer of calls) is far more attractive and profitable than a customer that makes 20 calls and receives none ( a net-exporter of calls).

Second, while carriers must avoid unprofitable activities, "bill and keep" does not make it unprofitable to serve customers that are net-importers of calls.

Third, if new entrants were to ignore customers with incoming calls, as suggested by the Commission, the new entrants would *forfeit* all revenues associated with vertical services (such as call waiting and remote call forwarding) and long distance calling. Clearly, because so much revenue is generated from those services, it would be quite foolish for new entrants to forfeit these revenues simply because these customers *receive too many calls* (i.e., are net-importers of calls).

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